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ABSTRACT

A legal model, involving a courtroom and jury, is presented as a method of educational evaluation. The negative reactions to the approach's previous supporters--Robert L. Wolf and Murray Levine--are discussed. The author interprets the trial in judicial educational evaluation as an adversarial process used to probe the complexities underlying an educational program. The trial seeks to reveal the truth, not to determine a victor. Based upon three observed educational trials, the author offers some impressions of the jury's role. Access to adequate, well-presented data and active participation by interested juries are stressed. The author also recommends that prescriptions for educational improvement should be written by the client with the problem, not the jury or the judge. Problems associated with judicial evaluation include: maintenance of the confidentiality of jury deliberations, conflicts between jurors who are not peers, the potency of some particular testimony in spite of conflicting evidence, the belief that jurors must represent their particular class or interest group, and poor understanding of legal concepts. The ideal number of jurors is yet to be determined. The author prefers that evaluations be conducted by amateurs who are seeking solutions, rather than protecting their professional reputations. (Author/GDC)

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The Role of the Jury in the Judicial Evaluation Approach

A paper given at the American Educational Research Association - April 1976

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I recall the ridicule my colleagues directed at Robert Wolf's (1975) notion about using judicial evaluation procedures in education a few years back. The early work of Kourilsky (1970) and Owen (1971) had pretty much gone unnoticed and lawyers and the law were hardly the kinds of models with which to associate a new educational idea. Wolf's embryonic assertions were viewed as constraining, formalistic, and impracticial. Worse, he was charged by some with failure to heed his own earlier writing on the need for more humanistic evaluation of teachers, teaching, and educational programs. Such skeptics hear the words "judicial" or 'legal" and quit listening. For what it is worth, from the start Wolf has presented an unusual interpretation of the law as applied to educational evaluation. For example, he advocated extensive modification of pretrial and courtroom procedures. Indeed, his work has an "anything goes" quality to it--which can be bothersome. His issue definition stage is open, participatory, and aims at broad statements of contention about an educational goal or program or result. Pretrial discovery and depositions are conducted in an informal manner with complete discovery available for all participants. The trial itself is not to be a fight to determine who wins. Rather, the trial is an adversarial process to probe the complexities which underlie an educational program or activity. It seeks to reveal the way things are--not to determine a victor.

So much for some of Wolf's principal inventions of judicial educational evaluation. After three years of development we can confidently point to a few facts learned in the practice of judicial educational evaluation. I have been there since the band started playing: having served on Wolf's doctoral committee, conducted one of the first tests of his thesis (Denny, University of Illinois, 1974) and acted as jury foreman for the first complete application of Wolf's approach at Indiana University (Wolf, 1975). I served as advocate for the complainant in the trial work of Owens (1975), and observed Levine's SUNY trial (1976). I shall say a few things about educational evaluation in general, after I discuss the role of the jury in the judicial evaluation approach. After observing juries in three educational trials, here are some of my impressions.

The Jury as a Component in a Quality System

It is foolish to invest heavily in audio speakers if other components of a sound system are of low or marginal quality. There just isn't that much quality to work with by the time it gets to the speakers. Some similarities come to mind in judicial evaluation. When the educational program is badly recorded at the deposition, (the pickup component if you will), or the issues poorly represented, the chances of the advocates, witnesses, and/or jury improving the low quality information are very poor indeed.

Wolf's approach does something about the passive role of the jury in the tradition of American jurisprudence. In his view educational juries must be more active components in the system. They send their own signals. They ask questions..may even take over the questioning of a witness on occasion.

Just the fact that they may take written notes during the trial is a bonus.

Prescription Writing, by Juries, Judges, and Professional Evaluators

Educational prescriptions written by evaluators are almost sure to be silly. By prescription writing I refer to what an evaluator usually says about changing a program after one has rendered a considered judgment. The jury tries the facts and finds for the complainant, let's say. That is, the complaint is seen to be true on a given educational issue: kids are not learning to read in School District 116 as well as might be reasonably expected or as claimed.

Now what? Prescribe what? Workshops for teachers, yes. Triple your investment in the program, yes. Terminate the extant program, adopt another one, yes. Institute a separate reading skills program, yes. Get better readers to come to your school district, yes, yes.

Silly. For the evaluator. And for the jury. And for the decision maker. Prescriptions presume exquisitely intimate knowledge about program, knowledge about educational priorities, knowledge about human capital in the district, and often a verified knowledge base about educational change strategy that just isn't there. Perhaps the maximum attempt at jury prescription writing should be the smallest change that can be imagined to produce a significant improvement in the program. Modest, sensible. But I say, best leave all prescriptions to someone else, to the client.

Seven Problems for and with Educational Juries

1. At Indiana University an educational jury refused to allow observation of their deliberations, either by live or mechanical means. At Illinois, they agreed to an audio tape record of their personal observations which underlay

their findings. At Syracuse the jury permitted a complete video-taping of their deliberations. Confidentiality of the jury deliberation is a difficult issue and one which I feel will persist for some time.

2. The interplay of personality within the jury can be another worrisome issue. Particularly this appears to be the case when the jury is an "expert" jury. Teacher education experts have their turf, as do those associated with the law. To those add research and evaluation experts and the potential for intellectual infighting among jurors is high. This matter is further complicated by the presence of truly naive jurors such as students, laymen . Then a pecking order may emerge in the juryroom with students and citizens emerging as minor luminaries. Further, pretrial relationships are an impossible barrier to overcome; particularly with cronies in expert juries, and with local friends, colleagues. Jurors should not only be peers in fact but they must be peers in perception of witnesses, decision makers and the co-litigants--a real problem. I will now turn to a problem for an educational jury, regardless of its composition.

3. The potency of the verbal image is a growing concern of mine for judicial evaluation. Jurors are really "dented" by a potent section of testimony. A phrase may be uttered by one witness, once -- yet it stays with a juror longer and is valued more than is considerable testimony offered at length by several witnesses. For some evaluators this is a delight. It neutralizes the numerology of the educational psychologist in program evaluation--the "more-is-important" viewpoint if you will.

4. The notion of representation can work against jury deliberation.

Some jurors just cannot get it out of their heads that they are representing their social class, race, religion, gender, interest group.

5. I have worked with four, ten, and twelve person juries and find the size to be quite arbitrary. My guess is the notion of truncated juries is one worth exploring. Less may be more.

6. The concept of the order of proof is not obvious to jurors in the educational hearing. Without such a notion in mind listening is made more difficult. My bias causes me to list this as a problem. The fact of the matter may be that it is a strength. We simply do not know at this writing. The next probem is pivotal to the future of Wolf and Levine's work as I see it.

7. It is tough to use standards we do not understand to try educational facts. Also, those which we understand but feel are not justified to our satisfaction as a juror. The educational juror is plagued by the persistant truth that we have no law in education. What are the standards agreed upon in the educational community? Where is the concept of precedent? Levine (1976) wrote law for his trial on what constitutes "educational benefit". I believe the trial would have been a disaster without it.

I shall conclude this laundry list with three comments about Wolf and Levine's work that makes the juror's role a pleasant one. First, full pre-trial discovery on the parts of the evaluation teams makes the juror feel that he or she does not have to be on guard for surprise tricks. Similarly, the use of written documents as evidence which a juror can read during the course of the trial, or before, is an informational bonus--at least for the literate juror.

Finally, Levine's ideas of charging the jury with the task of assigning subjective confidence levels to each of their findings as well as distributing the blame for program failure as they have found it are quite attractive to me. I believe they could make an enormous practical contribution to the utility of the jury findings.

A Word About Real Evaluation

The work of Wolf and others who have followed encouraged me to believe--for a while longer--that real evaluation may become general practice in education. I do not refer to so-called evaluation models. I believe real evaluation is most likely to occur when it is done by amateurs. Truth seekers not victory seekers. We need more real, amateur evaluators in education--not more professional evaluators. There is really very little to lose by dismissing the professional evaluators.

Amateur evaluators can afford to lose. Professionals who lose have their reputations damaged. Their personal worth is in constant peril by the expectations, demands, and judgments of a paying public. The potential energy that can be released and productively harmonized has been demonstrated in the jury's performance in at least two applications of judicial evaluation. Indeed, the one experience that fell short of this potential--involved a professional jury, pretty much. Personally, I remain to be convinced of the need for employing experts to conduct evaluation in general--especially in judicial evaluation. Rather, Wolf's largely undeveloped notions of educational courts, citizen juries, and evaluation procedures which honor the power of collectively harmonized human judgment are hopefully what lies ahead.

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